

LAW OFFICES

CAREY, DOUGLAS, KESSLER & RUBY, PLLC

901 CHASE TOWER
707 VIRGINIA STREET, EAST
P. O. BOX 913
CHARLESTON, WV 25323

MICHAEL W. CAREY
ROBERT E. DOUGLAS
JOHN A. KESSLER
STEVEN R. RUBY
DAVID R. POGUE
RAYMOND S. FRANKS II
S. BENJAMIN BRYANT

TELEPHONE (304) 345-1234
TELEPHONE (304) 342-1111
FACSIMILE (304) 342-1105

April 20, 2021

VIA EMAIL & U.S. MAIL

Patrick M. Casey, Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
PO Box 7611
Washington, D.C. 20044

Wilson S. Buntin, Senior Counsel
Tennessee Attorney General's Office
Environmental Division
PO Box 20207
Nashville, TN 37202

Robert D. Tambling
Assistant Attorney General
State of Alabama
501 Washington Avenue
Montgomery, AL 36130-0152

RE: FORMAL NOTICE OF DISPUTE

Dear Gentlemen:

As you are aware, on March 17, 2021, Southern Coal Corporation, Premium Coal

LAW OFFICES

CAREY, DOUGLAS, KESSLER & RUBY, PLLC

April 20, 2021

Page | 2

Company, Inc. and Justice Coal of Alabama, LLC sent the United States and the states of Alabama and Tennessee a Notice of Dispute relating to the assessment of stipulated penalties in your Notice of Default on September 2, 2020. Ex. 1. Having received no response from you within 30 days, as set forth in the Consent Decree, we assume you have chosen not to eliminate or reduce the stipulated penalties. Accordingly, pursuant to Section XII of the Consent Decree, we are submitting this Formal Notice of Dispute.

- A. As set forth in “Southern Coal Corporation’s, Premium Coal Company, Inc.’s, and Justice Coal of Alabama, LLC’s Opposition to Plaintiffs’ Motion to Compel Compliance with the Consent Decree” (Dkt. 28) and “Defendants’ Sur-Rebuttal” (Dkt. 34), we believe there is no legal basis in the Consent Decree upon which you can assess stipulated penalties associated with the coal companies’ failure to timely submit applications to renew the permits in question in Alabama and Tennessee. Those briefs and exhibits are specifically adopted herein in support of our position.
- B. The stipulated penalties assessed for Alabama in the amount of \$1,933,500 should be substantially reduced because much of the delay in renewing the permits was due to ADEM’s misapprehension that the coal company was required to have a surface mining permit from ASMC when, in fact, none was required because the company was not actively mining the properties. As noted in our letter to you of November 20, 2020, and adopted herein, Justice Coal submitted a renewal application on March 6, 2019, seventy days before the Poore Kirby mine permit

LAW OFFICES

CAREY, DOUGLAS, KESSLER & RUBY, PLLC

April 20, 2021

Page | 3

expired on May 15, 2019. ADEM issued a NOV on April 17, 2019, stating the company had failed to timely file its renewal application at least 180 days before the permit expired. Ex. 2. Justice Coal submitted a second renewal application on May 10, 2019; ADEM denied this application as well. Then, on July 26, 2019, TASK Engineering Management, Inc. submitted a third renewal application on behalf of Justice Coal. Notably, as part of the abatement of the NOV, Justice Coal had to submit a Cost Avoidance Analysis identifying any financial benefit flowing to the company arising from its failure to timely file the renewal application. As set forth therein, because mining activities at the site ceased in 2012, and grading and vegetation work was completed in 2014, there were no recurring annual costs resulting from delayed compliance. Further, because all required work under the prior permits has been performed, there was no change in compliance costs. Ex. 3. In essence, the failure to timely renew the permit did not financially benefit the company.

On December 4, 2019, ADEM confirmed that the third application and other information provided with it on July 26, 2019 (received by ADEM on August 1, 2019) met the intent of the NOV. Ex. 4. Because the NOV required the Company to submit a complete application, it is clear that ADEM deemed the third application to be complete as of its receipt on August 1, 2019. Nonetheless, on March 23, 2020, ADEM notified Justice Coal that the permit could not be renewed absent a surface mining permit from ASMC. Ex. 5. Because no mining

LAW OFFICES

CAREY, DOUGLAS, KESSLER & RUBY, PLLC

April 20, 2021

Page | 4

was taking place at the Poore Kirby mine, Justice Coal maintained no permit was required. ADEM finally agreed that a mining permit was not required and, on January 13, 2021, the renewed permit was issued by ADEM and became effective on February 1, 2021. Notably, there are only minor differences between the expired permit and the renewed permit. Ex. 6. Accordingly, it is Justice Coal's position that the permit should have been renewed within a reasonable time after July 26, 2019, but certainly no more than 180 days. Thus, assessing stipulated penalties through July 31, 2020 is not only arbitrary but it rewards ADEM for a delay caused by it. Although it is our view that the Consent Decree does not apply to permit lapses, if the Court does not agree, we also rely on the Force Majeure provisions of the Consent Decree as set forth in ¶29 and Section XI.

- C. The penalty assessed in Alabama should also be reduced because it is far in excess of the *de minimis* harm caused by the failure to timely seek renewal of the three permits in Alabama. Since the Consent Decree became effective on December 19, 2016, there have only been two effluent violations under only one of the permits. In May 2017, the Poore Kirby Mine had effluent violations for dissolved thalium for which the company paid a \$1,500 stipulated penalty and a pH violation for which it paid no penalty because it was corrected within 72 hours. Since the permits at issue in Alabama lapsed, the company has continued to sample and test all required outfalls and all of the discharges have been compliant with the expired permits. Ex. 7. Thus, in the entire time the Consent

LAW OFFICES

CAREY, DOUGLAS, KESSLER & RUBY, PLLC

April 20, 2021

Page | 5

Decree has been in place to date, there have only been two effluent violations, the last of which occurred almost four years ago. Accordingly, the assessment of over \$1,900,000 for the failure to timely seek renewal of permits is incredibly out of line with the *de minimis* harm resulting therefrom.

- D. While it is true that Premium Coal failed to timely seek renewal of the permits at issue in Tennessee, shortly after they expired TDEC determined that those permits were no longer needed because no mining is occurring at those sites. As a consequence, on September 21, 2020, TDEC directed the Company to submit a request to withdraw the renewal applications. Ex. 8. The Company then coordinated the withdrawal of the NPDES permits with OSM. Then, on April 7, 2021, the Company formally requested that the renewal applications be withdrawn. Ex. 9. Quite frankly, it seems absurd to assess over \$1,200,000 for the companies' failure to timely seek renewal of its NPDES permits when TDEC, nineteen days after the penalties were assessed, advised the Company that the permits were no longer required and directed the Company to withdraw the applications. This is particularly true since there have been NO effluent violations under the permits at issue in Tennessee since the Consent Decree became effective. *See* Ex. 7.

Under the Consent Decree, the regulatory agencies have the discretion to modify, reduce or eliminate the penalties assessed in your letter of September 2, 2020. Given the purpose of the Consent Decree is to strive to protect the water quality subject to the permits, the assessed

LAW OFFICES

CAREY, DOUGLAS, KESSLER & RUBY, PLLC

April 20, 2021

Page | 6

penalties far exceed the harm arising from the Companies' failures to timely renew the permits. Assessing over \$3.2 million for paperwork violations where there has been no harm to the environment seems heavy handed. Accordingly, we respectfully request that the assessed penalties be eliminated or, at least, substantially reduced.

Very truly yours,



Michael W. Carey

MWC/nes

cc: James C. Justice, III, President
Stephen W. Ball, CFO



U.S. Department of Justice

Environment and Natural Resources Division

pmc
90-5-1-1-10974

Environmental Enforcement Section
P.O. Box 7611
Washington, DC 20044

Telephone (202) 514-1448
Cell (202) 532-3365

September 2, 2020

Via Electronic and USPS Mail

Mr. Michael Carey, Esq.
Mr. Benjamin Bryant, Esq.
Carey, Scott, Douglas, & Kessler, PLLC
901 Chase Tower
707 Virginia Street, East
P.O. Box 913
Charleston, WV 25323
mwcarey@csdlawfirm.com
sbbryant@csdlawfirm.com

Mr. James C. Justice, III
Southern Coal Corporation
302 South Jefferson Street
Roanoke, VA 24011
jcj3@bluestoneindustries.com

Mr. Thomas Lusk
Southern Coal Corporation
302 South Jefferson Street
Roanoke, VA 24011
tomlusk@me.com

Mr. George Stephens
Southern Coal Corporation
302 South Jefferson Street
Roanoke, VA 24011
George.Stephens@bluestoneindustries.com

Stephen W. Ball
Southern Coal Corporation
302 S. Jefferson Street
Roanoke, VA 24011
Steve.ball@bluestoneindustries.com

RE: Demand for Stipulated Penalties and Notice of Default in United States of America vs. Southern Coal Corporation, Civil Action No. 7:16-cv-00462-GEC (W.D. Va.)

Dear Messrs. Carey, Bryant, Justice, Lusk, Stephens, and Ball:

This is a demand for stipulated penalties due to Defendants' (Southern Coal Corporation, Premium Coal Company, Inc., National Coal, LLC, and Justice Coal of Alabama, LLC) non-compliance with the December 19, 2016 Consent Decree (Decree). In addition, this is a Notice of Default in accordance with Paragraph 67 of the Decree.

On numerous occasions over the past four years, the U.S. Environmental Protection Agency (EPA), and the State Co-plaintiffs have determined that certain Defendants have failed to maintain adequate compliance with the Decree and the Clean Water Act (CWA). Recently, EPA learned that Defendants Southern Coal Corporation, Premium Coal Company, Inc., and National Coal, LLC, have failed to submit timely permit applications and/or maintain required permit coverage pursuant to the CWA National Pollutant Discharge Elimination System (NPDES) for 11 sites in Tennessee. As a result, the Tennessee Department of Environmental Conservation (TDEC) has discovered unpermitted discharges from three of those sites. A list of Tennessee sites with expired NPDES permits and unpermitted discharges is set forth in Attachment A. The failure to file timely applications for renewal, the failure to maintain NPDES permit coverage, and the resulting unpermitted discharges are violations of the Decree, Paragraphs 22 and 29, as well as the CWA.

In addition, certain Defendants have failed to timely submit applications for three NPDES permits in the State of Alabama, resulting in the failure to maintain required permit coverage pursuant to the CWA NPDES for one site in Alabama which has not, to date, received new permit coverage. As a result, the Alabama Department of Environmental Management has discovered unpermitted discharges from the site. A list of late application submittals, the expired permit coverage, and unpermitted discharges documented at an Alabama site is set forth in Attachment B. The failure to submit timely and complete applications to maintain NPDES permit coverage, the failure to maintain NPDES permit coverage, and the resulting unpermitted discharges are violations of the Decree, Paragraphs 22, and 29, as well as the CWA.

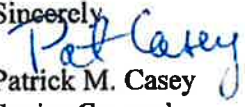
Defendants' noncompliance includes the failure to comply with the CWA as required by Paragraph 22, which provides that "Defendants shall perform the work required by this Consent Decree in compliance with the requirements of all applicable federal, state, and local laws, regulations, and permits." In addition, Defendants have failed to comply with Paragraph 29, which provides that "[w]here any compliance obligation under this Decree requires Defendants to obtain a federal, state, or local permit or approval, Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals." Furthermore, Defendants are required, under Paragraphs 22, 29, and 63 to take "all necessary additional actions to comply with the Defendants' NPDES permits for the term of the Consent Decree."

Defendants Southern Coal Corporation, Premium Coal Company, Inc., National Coal, LLC, and Justice Coal of Alabama, LLC are subject to stipulated penalties pursuant to Paragraph 85 of the Decree. The total stipulated penalties due for Defendant's failure to comply with the terms of the Decree is \$3,192,000, as indicated in Attachments A and B. Please note that stipulated penalties continue to accrue until the violations have been addressed. The United States hereby demands

that Defendants pay the accrued stipulated penalties to the United States, Tennessee, and Alabama within 30 days from the date of this letter. Please make such payment in accordance with Paragraphs 94, 98, and 99 of the Decree.

Finally, Defendants in this case, have been seriously and/or repeatedly deficient or late in performance of the Work under the Decree. In accordance with Paragraph 67 of the Decree, the United States demands that Defendants Southern Coal Corporation, Premium Coal Company, Inc., National Coal, LLC take all necessary steps to cease the unpermitted discharges at the sites identified in Attachment A with respect to Tennessee, and comply with the Decree and the CWA within 30 days of the receipt of this letter. The United States demands that Southern Coal Corporation, Premium Coal, and National Coal LLC implement the corrective actions identified in Attachment A-1 within 30 days and notify EPA and TDEC upon completion of this work. Should Defendants Southern Coal Corporation, Premium Coal Company, Inc., and National Coal, LLC fail to cease such unpermitted discharges in Tennessee by taking the specific corrective action measures in Attachment A-1, EPA will present a Sight Draft under the Letter of Credit to Carter Bank and Trust, initiating the Trustee's responsibility to hire and fund contractors to perform the Work in accordance with Paragraph 68 of the Decree.

Thank you for your attention to this important matter. Please contact me if you have any questions.

Sincerely,

Patrick M. Casey
Senior Counsel

Attachments

cc:

by USPS mail

Office of Attorney General, AL

Office of General Counsel, Alabama Department of Environmental Management

Rebecca Goodman, Executive Director/General Counsel, Kentucky Energy and Environment Cabinet

Tennessee Attorney General's Office

Office of the Virginia Attorney General

Wesley H. White Esq., Trust Legal Counsel, United Wealth Management Group

Steven W. Ball, Treasurer, Wintergreen Hospitality Partners, LLC

Phyllis Q. Karavatakis, President, Carter Bank & Trust

by electronic mail

W. Buntin, TN

wilson.buntin@ag.tn.gov

S. Durman, TN

stephanie.durman@tn.gov

C. Dear, AL

clint.dear@adem.alabama.gov

C. Blanton, AL

carrie.blanton@adem.gov

C. McNeill	cmcneill@adem.alabama.gov
M. Raack, EPAHQ	raak.melissa@epa.gov
D. Frankenthaler, EPA R3	frankenthaler.douglas@epa.gov
C. Harsh, EPA R3	harsh.chad@epa.gov
K. Nagrani, EPA R4	nagrani.kavita@epa.gov
T. Houda, EPA R4	houda.tara@epa.gov
L. Jonas, USDOJ	ljonas@enrd.usdoj.gov

Attachment A-1

Required actions to eliminate unpermitted discharges:

Premium Coal Refuse Area 2 (TN0063592)

- Vegetate or stabilize storage areas (see photos 1 and 2).

Premium Coal Mine 5A (TN0069159)

- Reslope and vegetate or otherwise stabilize the highwall area (see photo 3)
- Vegetate the staging area (see photo 3)

Premium Coal Mine 20 (TN0079570)

- Regrade and vegetate or otherwise stabilize the highwall area (see photo 4)
- Vegetate the spoil area (see photo 4)

Attachment A-1

Image Addendum

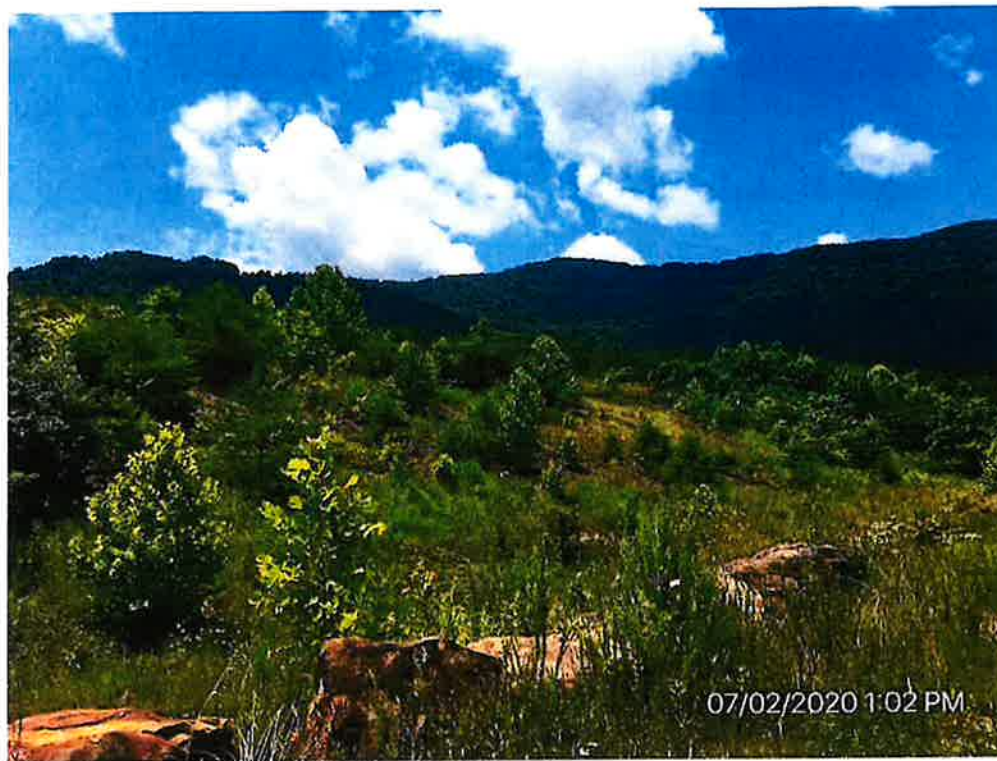


Photo 1: Premium Refuse Area 2. Bare areas on storage area must be vegetated or otherwise stabilized. 7/2/2020.



Photo 2: Premium Refuse Area 2. Pond 2 was discharging at the time of inspection. Discoloration is evidence of sediment load due to unvegetated areas. 7/2/2020.

Attachment A-1



Photo 3: Premium Coal Mine 5A. Highwall and staging area must be regraded and vegetated or otherwise stabilized. 5/19/2020.



Photo 4: Premium Coal Mine 20. Highwall and spoil pile must be regraded and vegetated or otherwise stabilized. 6/26/2020.

LANCE R. LEFLEUR
DIRECTOR



KAY IVEY
GOVERNOR

Alabama Department of Environmental Management
adem.alabama.gov

April 17, 2019

1400 Coliseum Blvd. 36110-2400 ■ Post Office Box 301463
Montgomery, Alabama 36130-1463
(334) 271-7700 ■ FAX (334) 271-7950

CERTIFIED MAIL 91 7199 9991 7034 1847 9368
RETURN RECEIPT REQUESTED

Tommy D. Lusk
Chief Operating Officer
Justice Coal of Alabama, LLC
P.O. Box 2178
Beaver, West Virginia 25813

RE: **Notice of Violation**
Poore Kirby Mine
NPDES Permit No. AL0078867
DeKalb County (097)

Dear Mr. Lusk:

The Department has completed a comprehensive evaluation of the Poore Kirby Mine facility in an effort to determine its compliance with applicable rules and provisions of the National Pollutant Discharge Elimination System (NPDES), ADEM Admin. Code div. 335-6, and NPDES Permit No. AL0078867.

ADEM Admin. Code r. 335-6-6-.12(b) requires a Permittee to submit a complete permit application for reissuance at least 180 days prior to the expiration of the current permit if the Permittee intends to discharge beyond the expiration date of the permit. Failure to submit a complete application to the Department at least 180 days prior to the expiration date of the permit will void continuation of the permit. The expiration date of the abovementioned permit is May 15, 2019. The application for renewal of NPDES Permit No. AL0078867 was due to be submitted to the Department no later than November 17, 2018. The Department received an incomplete application for reissuance late on March 6, 2019; however, until the appropriate application fees have been remitted, the application cannot be processed pursuant to ADEM Admin. Code r. 335-6-6-.08(1)(k)4.

ADEM Admin. Code r. 335-6-9-.05(1) states that all surface mining operations must have an NPDES permit issued by the Department. If the permit is not reissued prior to the May 15, 2019 expiration date, any discharges or mining operations which occur after May 15, 2019 will be unpermitted until the permit is renewed or coverage is obtained under another permit.

This notice of violation is made pursuant to Ala. Code §22-22-9(e) (2006 Rplc. Vol.).

Justice Coal of Alabama, LLC is required to submit to the Department all documents to complete the NPDES permit application including the appropriate fees of \$6,835.00. The documents to complete the application and applicable fees must be received within 30 days from the date of receipt of this notice. Unless waived by the Department, Justice Coal of Alabama, LLC's submittal must include all available information regarding capital

Birmingham Branch
110 Vulcan Road
Birmingham, AL 35209-4702
(205) 942-6168
(205) 941-1603 (FAX)

Decatur Branch
2715 Sandlin Road, S.W.
Decatur, AL 35603-1333
(256) 353-1713
(256) 340-9359 (FAX)



Mobile Branch
2204 Perimeter Road
Mobile, AL 36615-1131
(251) 450-3400
(251) 479-2593 (FAX)

Mobile-Coastal
3664 Dauphin Street, Suite B
Mobile, AL 36608
(251) 304-1176
(251) 304-1189 (FAX)

Justice Coal of Alabama -- Poore Kirby Mine
NPDES Permit No. AL0078867

Page 2 of 2

investments, one-time nondepreciable expenditures, and avoided annual recurring costs resulting from delayed compliance. Examples of costs that may have been avoided or delayed include, but are not limited to: monitoring and reporting costs, permitting costs, design costs, capital improvement or repair costs, and operating and maintenance expenses. The information that is provided should be related only to those portions of the costs which would be required for compliance. Please note all information submitted in response to this notice of violation will become a part of the public record, unless there is a satisfactory showing of confidentiality pursuant to ADEM Admin. Code r. 335-1-1-.06(2). These submittals must be mailed or delivered to Clint Dear at the Montgomery address listed above and must arrive at the Department's Montgomery Office by the required submittal date. Failure to submit the documents required by this notice is a violation of Ala. Code § 22-22-9(e) (2006 Rplc. Vol.) and ADEM Admin. Code r. 335-6-6-.12(h), for which civil penalties or criminal fines may be imposed.

After expiration of the permit, any mining, processing, construction, land disturbance, or other regulated activity prior to the effective date of coverage under a formal permit would be considered unpermitted and may be subject to further enforcement action, possibly to include the issuance of an administrative order with a civil penalty.

The Department encourages you to voluntarily consider pollution prevention strategies to resolve these present and prevent potential future violations.

If you have questions regarding this matter, please contact Clint Dear at clint.dear@adem.alabama.gov or 334-274-4238.

Sincerely,

Glenda L. Dean

Glenda L. Dean, Chief
Water Division

GLD/cdd File: ENOV/34017

cc: Catherine McNeill, ADEM
Clint Dear, ADEM
Christa Marks, ASMC

TASK ENGINEERING MANAGEMENT INC.

**PO BOX 660548
BIRMINGHAM, ALABAMA 35266
(205) 978-5070**

July 26, 2019

Mr. Clint D. Dear
Alabama Department of Environmental Management
Mining and Natural Resource Section
NPDES Stormwater Management Branch
Water Division Environmental Management
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2059

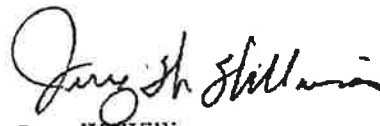
Re: Justice Coal of Alabama, LLC
Poore Mine
NPDES Permit AL0078867 Renewal Application

Dear Mr. Dear:

Per our previous correspondence, please accept the enclosed permit application on the above referenced facility.

If you have any questions or need additional information, please call us at your convenience at (205)978-5070.

Sincerely,



Jerry W. Williams,
Ala. PE #12739

COST AVOIDANCE ANALYSIS

JUSTICE COAL OF ALABAMA – POORE MINE – NPDES Permit #AL0078867

Introduction

The following analysis has been developed at the request of the Alabama Department of Environmental Management as a requirement for the abatement of the Notice of Violation, dated April 17, 2019 issued due to the failure to timely submit an NPDES renewal application (a minimum of 180 day prior to the expiration date) of the above referenced permit.

To determine the actual costs avoided due to delayed compliance with state laws and a corresponding timely submittal of a complete renewal application, a brief history of the mining operation has been developed. This historical timeline shows that due to fact active mining operations were ceased prior to complete mining of existing coal reserves at the permitted site during 2012 and required grading and vegetation operations completed during 2014, the annual recurring costs resulting from delayed compliance are minimal.

Prior to the ceasing of mining operations two (2) basin outfalls were constructed under an active NPDES permit (AL0078867) along with proper BMP's constructed and a Pollution Abatement Plan (PAP) implemented. Coal production at the site was terminated due to market conditions during 2012-2013 and all production and support equipment was removed from the site as grading and reclamation operations were completed during the fall planting season of 2014.

Due to a lapse in accurate record keeping, Justice Coal of Alabama did not submit a complete application for permit reissuance at least 180 days prior to the expiration of the permit. An incomplete permit application was submitted on March 6, 2019 just prior to the expiration date of May 15, 2019. Continuation of the permit is now voided and according to ADEM regulations any discharges or mining operations which occur after May 15, 2019 will be considered unpermitted.

At this time the Poore Mine is under a temporary cessation granted by the Alabama Surface Mining Commission with no active mining operations conducted since late 2014. Discharge samples from the existing basin outfalls have been collected according to the schedule and parameters of ADEM/NPDES Permit AL0078867 both before and after the permit expiration date of May 15, 2019.

Cost Avoidance Analyses developed by TASK Engineering have been historically based on three (3) categories, Administrative, Construction, and General Recurring costs. These cost categories are based on actual fees either paid or actual fees that should have been paid by the operator under an existing NPDES permit and are developed from best professional estimates (BPE) based on historical costs, cost of owning and operation of equipment units required for mining or reclamation operations and costs related the physical layout and parameters of the permitted area.

While costs have been incurred in the three (3) categories, other than Engineering/Permit Application costs and ADEM/NPDES Permit Fees, all other costs occurring within the categories have been paid under the previously issued ADEM/NPDES permit (AL0078867). In fact as of this analyses both the Engineering/Permit Application costs and the ADEM/NPDES permit fees have been paid and while this permit renewal has not proceeded according to usual schedules and/or practices, no outstanding annual recurring costs have resulted at this time due to delayed compliance.

Justice Coal of Alabama, LLC intends to restart mining operations in the near future when market conditions are favorable and when ADEM/NPDES Permit AL0078867 has been renewed. At this point in time, substantial investment will be required to reestablish site BMP's and a functional Pollution Abatement Plan. These costs are addressed in Section XVIII of the updated permit application that represent capital investment costs and on-time non-depreciable expenditures that will be required to open and complete the mining operations as defined by ASMC and ADEM permits. These costs have not been altered from what would be required for implementation of the permit items and conditions of the original permit.

Based on the previous conclusions, ADEM/NPDES Permit costs have neither increased nor decreased from the original permit requirements, however the timeline for implementation of the permit has been altered. Outfall sampling, sample analysis and monitoring reports will be continued under the existing permit conditions while the permit renewal is completed.

TOTAL AVOIDANCE COST

\$0.00

LANCE R. LEFLEUR
DIRECTOR



KAY IVEY
GOVERNOR

Alabama Department of Environmental Management
adem.alabama.gov

1400 Coliseum Blvd, 36110-2400 ■ Post Office Box 301463
Montgomery, Alabama 36130-1463
(334) 271-7700 ■ FAX (334) 271-7950

December 04, 2019

Bill Johnson
Vice President of Engineering
Justice Coal of Alabama, LLC
P.O. Box 2178
Beaver, WV 25813

RE: **Submittal Review of Notice of Violation Response**
NPDES Permit No. AL0078867
Poore Mine
DeKalb County (049)

Dear Mr. Johnson:

The Alabama Department of Environmental Management has received the Notice of Violation Response for the Poore Mine. The Department recorded the document as being received on August 01, 2019.

The Department has reviewed the abovementioned document and notes that the submittal meets the intent of the Notice of Violation. The Department appreciates your attention to this matter.

If you have questions regarding this matter, please contact Clint Dear by email at clint.dear@adem.alabama.gov or by phone at (334) 274-4238.

Sincerely,

Catherine McNeill, Chief
Mining and Natural Resources Section
Stormwater Management Branch
Water Division

CAM/cdd

File: CORS/34017

cc: Clint Dear, ADEM
Alabama Surface Mining Commission

Birmingham Branch
110 Vulcan Road
Birmingham, AL 35209-4702
(205) 942-6168
(205) 941-1603 (FAX)

Decatur Branch
2715 Sandlin Road, S.W.
Decatur, AL 35603-1333
(256) 353-1713
(256) 340-9359 (FAX)



Mobile Branch
2204 Perimeter Road
Mobile, AL 36615-1131
(251) 450-3400
(251) 479-2593 (FAX)

Mobile-Coastal
3664 Dauphin Street, Suite B
Mobile, AL 36608
(251) 304-1176
(251) 304-1189 (FAX)

LANCE R. LEFLEUR
DIRECTOR



KAY IVEY
GOVERNOR

Alabama Department of Environmental Management
adem.alabama.gov

1400 Coliseum Blvd. 36110-2400 ■ Post Office Box 301463
Montgomery, Alabama 36130-1463
(334) 271-7700 ■ FAX (334) 271-7950

MAR 23 2020

CERTIFIED MAIL 91 7108 2133 3936 7152 8786
RECEIPT REQUESTED

Mr. Bill Johnson
Vice President of Engineering
Justice Coal of Alabama, LLC
Post Office Box 2178
Beaver, WV 25813

Re: Application Denial
NPDES Permit No. AL0078867
Poore Kirby Mine
Jackson County (071)

Dear Mr. Johnson:

The National Pollutant Discharge Elimination System (NPDES) Permit Number AL0078867, hereinafter the Permit, was initially issued by the Alabama Department of Environmental Management (ADEM) to Justice Coal of Alabama, LLC on May 16, 2014, with the respective effective and expiration dates being May 16, 2014, and May 15, 2019. The renewal application to administratively extend the Permit was due to the Department on November 17, 2018. The Department recorded the application as being received on August 1, 2019.

An application for an NPDES permit for the type of operations proposed by Justice Coal of Alabama, LLC is not a complete application if it has not been submitted to and accepted by the Alabama Surfacing Mining Commission (ASMC) in compliance with a Memorandum of Agreement with ASMC regarding activities of this type in Alabama. The ASMC made a determination to deny the application submitted by Justice Coal of Alabama, LLC on February 6, 2020, due to the renewal application not being completed in a timely manner. As a result, the NPDES Permit Application was rendered incomplete.

ADEM Admin. Code r. 335-6-6-.08(k)(7) states that "[t]he permit writer shall determine if a permit application is complete as defined by this rule and if all the information necessary for determining permit conditions has been submitted. If additional information is required, the permit writer shall request the information from the applicant in writing and failure to respond by the applicant shall be grounds for denial of the permit application."

Within 30 days of receipt of this letter, Justice Coal of Alabama, LLC must submit to the Department documentation that shows that a completed application has been submitted to and accepted by the Alabama Surfacing Mining Commission.

If the information noted above is not submitted by the abovementioned deadline, or an alternate date acceptable to the Department, the Department will proceed with denial of the NPDES application based on the failure to submit a complete application as allowed by ADEM Admin. Code r. 335-6-6-.17(c)(1)(iv).

Any mining, processing, construction, land disturbance, or other regulated activity, with the exception of the implementation of BMPs to prevent unpermitted discharges of pollutants, prior to the effective date of coverage under a formal permit would be considered unpermitted and may be subject to further enforcement action, possibly to include the issuance of an administrative order with a civil penalty.

If you have any questions concerning this matter, please contact Clint D. Dear by email at clint.dear@adem.alabama.gov or by phone at 334-274-4238.

Sincerely,

Jeffery W. Kitchens, Chief
Water Division

JWK/edd

File: CORS/34017

cc: Clint D. Dear, ADEM
Alabama Surface Mining Commission

Birmingham Branch
110 Vulcan Road
Birmingham, AL 35209-4702
(205) 942-6168
(205) 941-1603 (FAX)

Decatur Branch
2715 Sandlin Road, S.W.
Decatur, AL 35603-1333
(256) 353-1713
(256) 340-9359 (FAX)



Mobile Branch
2204 Perimeter Road
Mobile, AL 36615-1131
(251) 450-3400
(251) 479-2593 (FAX)

Mobile-Coastal
3664 Dauphin Street, Suite B
Mobile, AL 36608
(251) 304-1176
(251) 304-1189 (FAX)

**Justice Coal of Alabama
2014/2017 Permit to 2021 Permit**

Changes In Testing Requirements

The ORIGINAL permit was issued May 16, 2014.

The MODIFIED permit was issued March 15, 2017 to expire May 15, 2019.

The NEW permit was issued January 13, 2021 to expire January 31, 2026.

Material Changes

1. Requirements to test for, and numeric limits on effluent discharge for dissolved Copper, dissolved Nickel, dissolved Zinc, and dissolved Mercury were omitted from 2021 permit.
2. Thallium level reduced.
Old = 0.34
New = 0.27
3. Discharge limits for pH were made more restrictive.
Old = 6.0-9.0su
New = 6.0-8.5su
4. Toxicity Testing.
Old = Cereodaphnia, Acute
(pass/fail measurement)
New = Acute testing as above, and added Ceredaphnia, Chronic test

AND

Old = Pimephales, Acute
(pass/fail measurement)
New = Acute testing as above, and added Pimephales, Chronic test

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
(ROANOKE DIVISION)

THE UNITED STATES OF AMERICA,
ET AL.,

Plaintiffs,

v.

Civil Action No. 7:16-CV-00462-GEC

SOUTHERN COAL CORPORATION,
ET AL.,

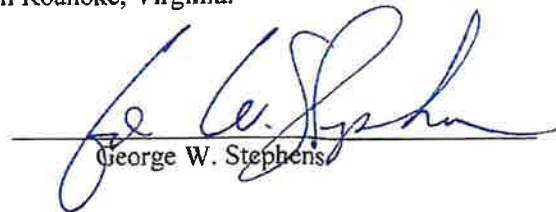
Defendants.

DECLARATION OF GEORGE W. STEPHENS

1. I, George W. Stephens, give this Declaration in relation to "Southern Coal Corporation's, Premium Coal Company, Inc.'s and Justice Coal of Alabama, LLC's Opposition to Plaintiffs' Motion to Compel Compliance With the Consent Decree."
2. I am employed by Blackstone Energy Group, and work at the corporate offices of Southern Coal Company and affiliates, which include Justice Coal of Alabama and Premium Coal Company, as Environmental Compliance Manager.
3. My job responsibilities include preparation of the quarterly reports required by the Consent Decree in the above-styled case, review and management of field and laboratory data concerning the sampling, testing and reporting of water discharged from active outfalls on NPDES permits held by all Defendants. The quarterly reports list effluent violations, and other violations, and the stipulated penalties assessed.
4. Based on the records, including quarterly reports from 4th quarter 2016 through the 4th quarter 2020, I affirm the following:

- a. From October 1, 2016 through December 31, 2020, there were no effluent limit violations for NPDES permits TN0063592, TN0069159 and TN0079570 at Premium Coal Company mines in Tennessee.
 - b. From October 1, 2016 through December 31, 2020, there were only two effluent limit exceedances under NPDES permit AL0078867 which resulted in violations and a stipulated penalty at Justice Coal of Alabama's Poore Kirby Mine in Alabama. Those exceedances occurred May 12, 2017, for dissolved thalium for which Justice Coal paid a \$1,500 stipulated penalty and, on May 30, 2017, for pH for which no penalty was assessed because the effluent was remedied and brought into compliance within 72 hours of receipt of the report of the pH exceedance. There were no effluent violations under NPDES permits AL0080071 or AL0073962 during the same period.
5. During the time periods that NPDES permits of Justice Coal of Alabama and Premium Coal Company in Tennessee were lapsed, the Companies continued to have the outfalls on the lapsed permits sampled and tested, as required by the (lapsed) permits; during which time periods there were no effluent limit exceedances or violations.

Executed this 25 day of March, 2021, in Roanoke, Virginia.


George W. Stephens

8



STATE OF TENNESSEE
 DEPARTMENT OF ENVIRONMENT AND CONSERVATION
 KNOXVILLE ENVIRONMENTAL FIELD OFFICE
 DIVISION OF WATER RESOURCES – MINING SECTION
 3711 MIDDLEBROOK PIKE
 KNOXVILLE, TENNESSEE 37921-6538
 PHONE (865) 594-6035 STATEWIDE 1-888-891-8332 FAX (865) 594-6105

September 21, 2020

Mr. Jay Justice III
 CEO
 Southern Coal Company
 302 S. Jefferson St.
 Roanoke, VA 34011

Mr. Bill Johnson
 Chief Compliance Officer
 Premium Coal Company, Inc.
 National Coal, LLC
 P.O. Box 2178
 Beaver, WV 25813

Via U.S. Mail and E-mail

RE: STATUS OF EXPIRED NPDES PERMITS

County	Permit number	Company Name	Project Name
Campbell	TN0079570	Premium Coal Company, Inc.	Mine 20
Anderson	TN0071307	Premium Coal Company, Inc.	Area 18
Anderson	TN0079308	Premium Coal Company, Inc.	Mine 4
Anderson	TN0076368	Premium Coal Company, Inc.	Refuse Area #3
Anderson	TN0063592	Premium Coal Company, Inc.	Refuse Area #2
Anderson	TN0052965	Premium Coal Company, Inc.	Mine 17
Anderson	TN0069159	Premium Coal Company, Inc.	Mine 5A
Anderson	TN0079529	Premium Coal Company, Inc.	Area 19
Scott	TN0071803	National Coal, LLC	Deep Mine 8
Scott	TN0072729	National Coal, LLC	Deep Mine 9
Campbell	TN0076180	National Coal, LLC	Deep Mine 10

Dear Messrs. Justice and Johnson:

The above referenced NPDES permits in Tennessee are presently expired. The Division of Water Resources (the Division) recently conducted inspections at these facilities. Based upon the inspection findings and a review of water quality data, the Division has determined that

From: [Bill Johnson](#)
To: [Hunter Naff](#)
Cc: [Steve Ball](#)
Subject: FW: SWPPP Applications
Date: Wednesday, April 7, 2021 10:39:02 AM

From: Bill Johnson [mailto:bill.johnson@bluestone-coal.com]
Sent: Wednesday, April 7, 2021 10:38 AM
To: 'Daniel Lawrence' <Daniel.Lawrence@tn.gov>
Subject: SWPPP Applications

Daniel:

As you know, we are in the process of submitting SWPPP applications for the eleven (11) permits set forth below. Accordingly, please have this notice serve as the formal withdrawal of our pending applications for renewal of the expired NPDES permits, which were for the same permits set forth below.

TN0071803	National Coal, LLC	Deep Mine 8
TN0076368	Premium Coal Company, Inc	Refuse Area #3
TN0071307	Premium Coal Company, Inc.	Area 18
TN0063592	Premium Coal Company, Inc.	Refuse Area 2
TN0069159	Premium Coal Company, Inc.	Mine 5A
TN0052965	Premium Coal Company, Inc.	Mine 17
TN0079570	Premium Coal Company, Inc.	Premium Coal Mine 20
TN0076180	National Coal, LLC	Deep Mine 10
TN0072729	National Coal, LLC	Deep Mine 9
TN0079529	Premium Coal Company, Inc.	Area 19
TN0079294	Premium Coal Company, Inc.	Mine 3

Thank you for your attention to this matter.

Best regards,

Bill Johnson



***** CONFIDENTIALITY NOTICE AND WARNINGS *****

This email may contain information that is private and confidential. If you receive this email in error, please advise by return email and delete immediately without reading, copying or forwarding to others.
